

**BEFORE THE STATE OF ALASKA OFFICE OF ADMINISTRATIVE HEARINGS  
ON REFERRAL BY THE COMMISSIONER OF REVENUE**

IN THE MATTER OF )  
 )  
P. E. ) Case No. OAH-07-0388-CSS  
 ) CSSD Case No. 001047847  
\_\_\_\_\_)

**DECISION & ORDER**

**I. Introduction**

The obligor, P. E., appeals a Modified Administrative Child Support and Medical Support Order issued by the Child Support Services Division (CSSD) on May 29, 2007. CSSD moved for summary adjudication. Administrative Law Judge Dale Whitney of the Office of Administrative Hearings heard the motion on July 24, 2007. Mr. E. appeared by telephone represented by his father, attorney W. E..<sup>1</sup> David Peltier represented CSSD. The custodian, C. M., did not appear. The child is J. M. (DOB 00/00/94). No ruling was made on the motion, and a hearing was scheduled for August 16, 2007, in order to afford the parties an opportunity to resolve the case or to file an amended appeal. Mr. E. did not file an amended appeal, nor did the parties submit a stipulated resolution of the case. On August 16, 2007, W. E. appeared by telephone, Andrew Rawls represented CSSD, and Ms. M. again did not appear.<sup>2</sup>

The administrative law judge grants CSSD’s motion for summary adjudication and issues an order adopting CSSD’s revised support calculation.

**II. Facts**

Mr. E.’s appeal reads, in its entirety, “my son came to live with me May 25, 2007. Please make corrections on this matter. Thank you.” At the first appearance on the record, Mr. E. stated that J. was back living with Ms. M., but that he had other concerns about the support calculation, including the fact that he was not eligible for a PFD, had been incarcerated and unable to earn income, and that he was paying support under an existing order for an older child. CSSD agreed that these items could affect the support calculation, and stated that it would adjust the support amount if these facts could be verified. Mr. E. and CSSD agreed to make an effort to stipulate to an agreed resolution of the case. In the event they were unable to resolve the case, Mr. E. agreed that he would file an amended appeal specifically stating the issues on appeal before the hearing date. No stipulation was filed, and Mr. E. did not file an amended appeal or

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<sup>1</sup> W. E. stated on the record that he is representing his son P. E. in this matter, but to date no Entry of Appearance has been filed.

<sup>2</sup> For both hearings, the administrative law judge attempted to contact Ms. M. and left messages.

any other materials. CSSD filed a post-hearing brief stating that Mr. E. has not made a payment on his older child's case since November, 2006, and that Mr. E. was released from custody with an ankle monitor in December 2006 and has therefore been able to work.

In the modified order, CSSD had set Mr. E.'s support obligation at \$256 per month for one child, effective May 1, 2007. In its post-hearing brief, CSSD calculated that without PFD income, the amount should be \$241 per month for one child. These calculations were based on hourly income of \$8.00, the amount that Mr. E. apparently earned while working in his father's law office.

On August 16, 2007, W. E. reported that P. E. had recently been remanded to custody and would be incarcerated until November 12, 2007. W. E. asked that the case be continued for 90 days to afford an opportunity to see what P. E.'s prospective earnings were likely to be. CSSD pointed out that Mr. E. has only recently returned to custody, and if he were to file a new request for modification based on changed circumstances, that potential new order would cover the time from this point forward during which Mr. E. was incarcerated and unable to work. Other than statements of counsel, Mr. E. has not presented any evidence.

### **III. Discussion**

A person appealing a decision of CSSD must "state the grounds for the objection, including a brief summary of the facts at issue, the legal authority, and if appropriate, any generally accepted accounting principles that support the request for appeal."<sup>3</sup> Mr. E. was represented by counsel, and in spite of specific directions to do so, he did not file a written statement of the reasons he had appealed the modified order, aside from his original and now moot assertion that the child was living with him.

At a formal hearing, the person who has requested the hearing has the burden of proving that CSSD's decision was in error.<sup>4</sup> CSSD has conceded that it was incorrect to calculate support based on PFD income, but Mr. E. has not demonstrated any other error in the modified order. If subsequent events are likely to constitute a material change in circumstances, Mr. E. may request another modification review. Administrative appeals are subject to time limitations.<sup>5</sup> To keep a pending case open indefinitely in order to see what might lie in the obligor's financial future is not the correct approach to potentially changing circumstances.

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<sup>3</sup> 15 AAC 05.010(a)(2).

<sup>4</sup> 15 AAC 05.030(h).

<sup>5</sup> AS 44.64.060(d).

Support should be set based on the best evidence of earnings or earning potential available at the time. Mr. E. has not demonstrated that CSSD erred in estimating that Mr. E. is capable of earning \$8 per hour, even if there is a limited period of incarceration in his future.

**IV. Conclusion**

CSSD concedes that PFD income should not have been included in the child support calculation. Excluding PFD income, Mr. E.'s support obligation has been properly calculated to be \$241 per month for one child.

**V. Order**

IT IS HEREBY ORDERED that Mr. E.'s support obligation be set at \$241 per month for one child, effective May 1, 2007.

DATED this 21<sup>st</sup> day of August, 2007.

By: Signed  
DALE WHITNEY  
Administrative Law Judge

### **Adoption**

This Order is issued under the authority of AS 43.05.010 and AS 44.17.010. The undersigned, on behalf of the Commissioner of Revenue and in accordance with AS 44.64.060, adopts this Decision and Order as the final administrative determination in this matter.

Under AS 25.27.062 and AS 25.27.250, the obligor's income and property are subject to withholding. Without further notices, a withholding order may be served on any person, political subdivision, department of the State, or other entity.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 25.27.210 and Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 7th day of September, 2007.

By: Signed  
DALE WHITNEY  
Administrative Law Judge

[This document has been modified to conform to technical standards for publication.]